U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

April 2, 2004

The Honorable Alan Greenspan
Chairman
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue, NW
Washington, DC 20551

The Honorable John D. Hawke, Jr.
Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable James E. Gilleran
Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Joint Proposed Revisions to Community Reinvestment Act Regulations

Dear Chairman Greenspan, Comptroller Hawke, Director Gilleran and Chairman Powell:

We are Writing about the joint proposed revisions to the regulations implementing the Community Reinvestment Act (CRA). In general, the exemption of over 1,100 mid-sized banks from the more rigorous investment and service tests, and the fact that the regulation does not contain any enforcement of CRA commitments made during financial institution merger transactions, outweighs the small benefits that arise from the inclusion of a weak anti-predatory lending component and a marginal improvement relating to the consideration of affiliate lending activity.

Mid-Sized **Banks** Should Not be Exempted from the Investment **and Service** Tests

Currently, a financial institution is considered a "small bank" if it has less than $250 million in assets and is independent or affiliated with a holding company with total bank and thrift assets of less than $1 billion. The CRA examination for a small bank has been streamlined since 1995 and focuses primarily on an institution's lending record. For a large bank, the CRA exam is more comprehensive. In addition to a review of the institution's lending record, the exam reviews the institution's record of investments in, and service to, the communities in which they are located.

The proposed regulation would increase the size of financial institutions subject to the less stringent small bank CRA exam from $250 million to $500 million in assets, regardless of the size of its affiliated holding company. This change would reduce the number of financial institutions that are subject to the broader CRA exam from 2,236 institutions to 1,105 institutions. These mid-sized financial institutions would no longer be evaluated on whether they invest in low income housing tax credits, or other forms of financing for affordable housing for low- and moderate-income dwellers. If the proposal is adopted, **88** percent of the institutions covered by CRA would be exempt from comprehensive CRA exams that would take into account their community investments and their service to their communities.

We believe the existing small bank definition is appropriate and should not be altered. For example, a February **2004** ThriftInvestor article, ***The Regulators: Testing the water* of *CRA reform,*** found that one $439 million institution, "right after our [CRA] exam," invested **$2** million in a CRA fund that invests in mortgage-backed securities in its area. The institution did that because it sought to get an 'outstanding' CRA rating. Without being subject to an investment test under the CRA exam, that institution might not have made that investment. Other mid-sized financial institutions may reduce their community investments if they are no longer subject to the investment test.

Furthermore, merely exempting some mid-sized financial institutions from the investment test does not address the underlying problem with how investments are currently evaluated. The investment test **has** been criticized for not adequately encouraging institutions to make complex investments that are critically needed in low- and moderate-income communities such **as** for multi-family affordable housing. The proposal would not solve this problem. Instead of trying to remedy the problem of having a significant portion of financial institutions chasing after the same type of community investments, the proposal would simply eliminate the investment requirement for more than 1100 mid-sized financial institutions.

Similarly, if the definition is changed, many mid-size financial institutions may have less incentive to keep open or locate new branches or ATM machines in low- and moderate-income communities or to offer services that many ethnically diverse communities need such as money transfer or remittance services. Therefore, we are concerned that if the definition is changed to exempt many mid-sized banks from the investments and service parts of the broader CRA exam than these banks would no longer have a regulatory incentive to provide affordable or basic banking services that often serve an important first step to bringing the unbanked into the mainstream of financial services.

Predatory Lending Proposal Does Not Seriously Strengthen the Existing CRA Regulation

While the proposal appears to subject financial institutions to a new, strong predatory lending review, this limited review may not adequately determine whether predatory lending is in fact occurring. The proposal would allow a financial institution's CRA rating to be reduced if it has a record of loans based on the foreclosure value of the property rather than the borrower's ability to repay. However, the proposal would not require that loans involving other predatory lending practices such as the packing of high fees, high prepayment penalties and loan flipping be viewed as predatory lending. While the proposal's Supplementary Information indicates that these types of predatory lending practices may involve unfair or deceptive acts or practices under the Federal Trade Commission Act, the proposed regulation does not identify those practices as predatory lending practices.

It is not clear the extent to which the enumeration of some predatory lending standards would strengthen the existing consideration of discriminatory or other illegal credit practices as adverse CRA factors. Financial institutions are already subject to prohibitions against discriminatory, illegal or abusive lending practices, and evidence of those practices adversely affect the evaluation of a financial institution's CRA performance under existing CRA regulations. Thus, if this proposal is intended to be a serious effort to strengthen this section of CRA, than the predatory lending standard should be much stronger.

All Affiliate Activities Should be Included in CRA Evaluations

Under the current regulation, a financial institution may elect, at its option, to have loans of a non-depository affiliate considered as part of its evaluation. The financial institution may also elect what category of loans are to be considered in the evaluation. As such, a financial institution may select those loans that reflect favorably on its record and omit those that do not. The proposal would improve this cherry-picking because once a financial institution elects to have the loans of its affiliates included in its evaluation, all the loans of the affiliate would have to be considered.

Unfortunately, the proposal would retain two of the flaws of the current regulation. First, it would continue to allow a financial institution to elect whether to have its affiliates lending activities considered. Second, it would only consider loans of affiliates in the geographic area of the financial institution. We believe that the corporate structure of the financial institution should not be determinative of whether an institution's lending activity is consistent with its obligations under CRA. Rather, activities conducted in affiliates should be included in the CRA evaluation of a financial institution, and the location of the activities should not be a reason to exclude their consideration. This loophole, which has allowed an institution that enters into a payday rent-a-charter arrangement to avoid having those activities considered as part of their CRA evaluation. should be eliminated.

Merger Commitments Need to be Enforceable

This proposal fails to address whether CRA commitments that a financial institution may publicly promise to fulfill when it is applying to merge with another institution should be enforceable under the CRA. Community advocates and financial institutions will generally negotiate CRA commitments for the institution to lend and invest certain dollar amounts in under-served or economically distressed communities for a specific period of time. These CRA agreements help local communities and community advocates better evaluate how a future merger may impact their community. The Board, in fact, acknowledges in its September **23,** 1998, decision on Travelers Group Inc.'s application to acquire Citicorp that "communications by depository institutions with community groups provide a valuable method of assessing and determining how an institution may best address the credit needs of the community." The Board may weigh these agreements as indications of the intent of a financial institution to maintain and strengthen their current commitment to serving the banking convenience and needs of their communities **as** in the Traveler's decision. Nevertheless, the Board still views these agreements **as** matters outside the CRA.

Because neither the CRA nor CRA regulations require depository institutions to enter into agreements with any organization, the Board considers the CRA agreements and their enforceability as private contractual matters between parties. Although a financial institution is not required to enter into a CRA agreement, once it opts to voluntary make a CRA commitment, it should be required to submit the agreement **as** part of its merger application. In its March 8, **2004,** decision approving the merger of Bank of America Corporation and FleetBoston Financial Corporation, the Board states that although Bank of America had publicly announced "commitments" to engage in certain lending programs in Hawaii in connection with its acquisition of Liberty Bank, "it did not make them **as** commitments to the Board, and these plans were not conditions to the Board's approvals in Liberty Bank or NationsBank." The Board views these third-party pledges, commitments, or agreements as matters outside the CRA.

We disagree. Institutions enter into these agreements to demonstrate their ability to continue to meet the convenience and needs of the communities in which they serve once the merger is consummated, and whether they fulfill these commitments should be enforceable under the CRA. Such commitments are **an** integral part of the process of gaining a community's approval for bank mergers, and it is simply inaccurate to say that these commitments are "outside CRA."

Sincerely,

REP. BARNEY FRANK

REP. BERNARD SANDERS

REP. MAXINE WATERS

REP. CAROLYN B. MALONEY

Luis V. Gutierrez

REP. LUIS V. GUTIERREZ

Julia Carson

REP. JULIA CARSON

Melvin L. Watt

REP. MELVIN L. WATT

Michael E. Capuano

REP. MICHAEL CAPUANO